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| 10/045,629      | 10/25/2001  | Frederick M. Morgan  | C01104/70091 RFG    | 3677             |

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EXAMINER

PHILOGENE, HAISSA

ART UNIT PAPER NUMBER

2821

DATE MAILED: 06/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/045,629

Applicant(s)

MORGAN ET AL.

Examiner

Haissa Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 47-54 is/are allowed.
- 6) ☒ Claim(s) 1-6, 24-27 and 44-46 is/are rejected.
- 7) ☒ Claim(s) 7-23 and 28-43 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 28 August 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by McDermott, Patent No. 5,161,879.

McDermott discloses in Figs. 16 and 17 an apparatus comprising: at least one light source 63 to generate variable color radiation without requiring the use of a color filter, the at least one light source 63 being adapted such that at least a color of the variable color radiation provided by the radiation output of the light source 63 is controllable based on at least one interruption via control switch 33 of power 35 supplied to the apparatus; said at least one light source 63 including at least one LED which include at least two differently colored LEDs (shown as 70A and 71B) or more colors of visible spectra (see col.9, lines 31-33) readable as inherently including at least one red LED, at least one green LED, and at least one blue LED as primary colors.

Claim 46 is rejected under 35 U.S.C. 102(b) as being anticipated by Robbins, Patent No. 4,704,660.

Robbins discloses in Fig.11 a method of illuminating a liquid (water) contained in one of a pool and a spa 238 with variable color radiation provided the radiation output of a light source 242 via light-transmitting members (260-270), comprising an act of: mounting a

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lighting fixture (242-270), adapted to generate the variable color radiation, on a portion of an inner surface 240 of the one of the pool and the spa 238, the inner surface 240 being at least partially in contact with the liquid (water).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 27, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDermott in view of Robbins.

McDermott discloses the claimed invention substantially as explained above except for the at least one light source being adapted to be supported by one of a pool and a spa so as to illuminate with the variable color radiation a liquid contained in the one of the pool and the spa or in combination with the one of the pool and the spa. Robbins discloses in Fig.11 an apparatus comprising at least one light source 242 being adapted to be supported by one of a pool and a spa 238 via fiber optics bundles 248-258 so as to illuminate with a variable color radiation provided the radiation output of a light source 242 via light-transmitting members (260-270) a liquid (water) contained in the one of the pool and the spa 238 or in combination with the one of the pool and the spa (as shown). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the light source and pool/spa arrangement as taught by

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Robbins into the MCDermott type apparatus, because it would allow a pleasing illumination effect in the interior of a pool/spa, thereby improving the efficacy of the illumination system.

***Allowable Subject Matter***

Claims 7-23, 28-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 47-54 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art fails to disclose the apparatus further comprising at least one controller, coupled to the at least one light source, to control the variable color radiation generated by the at least one light source based on the at least one interruption in the power supplied to the apparatus (claim 7); the act b) comprises an act of: b1) controlling the variable color radiation based on at least one interruption in the power having an interruption duration that is less than or equal to a predetermined duration (claim 28); the act b) comprising acts of: executing at least one illumination program to control the variable color radiation generated by the at least one light source; and modifying at least one variable parameter of the at least one illumination program based on the at least one interruption in the power (claim 32); the act b) comprising an act of: b4) selecting and executing at least one illumination program, based on the at least one

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interruption in the power, so as to control the variable color radiation generated by the at least one light source (claim 33).

The prior art fails to further disclose in an illumination system in which a plurality of illumination programs may be executed to control a generation of variable color radiation, a method comprising an act of: a) indicating to a user, via at least the variable color radiation, that a particular illumination program of the plurality of illumination programs has been selected (claim 47); in an illumination system in which a plurality of illumination programs may be executed to control a generation of variable color radiation, an apparatus comprising: at least one controller to indicate to a user, via at least the variable color radiation, that a particular illumination program of the plurality of illumination programs has been selected (claim 51).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Awai et al., Patent No. 4,763,984 ; « Lighting apparatus and method ».

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haissa Philogene whose telephone number is (703) 305-3485. The examiner can normally be reached on 6:30 A.M.-6:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on (703) 308-4856. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7722 for

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regular communications and after Final communications. The fax number for the examiner is (703) 746-4054.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

hp  
May 31, 2003

11282 CIM  
Maissa P. Milogone  
Patent Examiner  
Art Unit 2821  
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